

IDAHO REAL ESTATE COMMISSION MEETING MINUTES

October 18, 2007

Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held in the hearing room of the Public Utilities Commission, 472 West Washington St., Boise, Idaho, on Thursday, October 18, 2007 at 8:30 a.m.

Commission Members Present:

Steve Kohntopp, Chair, Filer
Andy Enrico, Vice Chair, Boise
Kelly Fisher, Member, Pocatello
Pam Trees, Member, Lewiston
Comprising a quorum of the Commission

Members Absent:**Staff Present:**

Jeanne Jackson-Heim, Executive Director
Craig Boyack, Chief Investigator
Sue McClintock, Education Director
Tammy Anderson, Administrative Assistant
Saunya Prisock, Education Administrative Assistant
Jesama Rosensweig, Office Specialist
Kim Kelley, Investigator
Helena Guest, Office Specialist
Don Morse, Investigator

Others Present:

Kim Coster, Commission Legal Counsel
Kevin Price, Idaho Association of REALTORS®
See attached list

Meeting was called to order at 8:34 a.m. by Commission Chair, Steve Kohntopp.

Introductions:

- a. Commissioners
- b. New Staff Saunya Prisock and Helena Guest
- c. Staff

Approval of Meeting Minutes: Motion was made by Kelly Fisher to approve the September 19, 2007 Commission meeting minutes. Motion carried.

Approval of Agenda: Motion was made by Kelly Fisher to approve the October 18, 2007 agenda. Motion carried.

Financial Reports: Motion was made by Kelly Fisher to approve the September 2007. Financial Reports. Motion carried.

Salesperson and Broker Licenses Issued: Members reviewed the salesperson and broker licenses issued during the month of September 2007, a copy of which has been made part of these minutes. Motion was made by Kelly Fisher to approve the report. Motion carried.

License Examination Statistics

Commissioners reviewed the license exam statistics report.

Staff Reports:

Enforcement:

The following reports were presented for members' review; copies of which are on file at the Commission office.

- **Complaint Summary Report**

Licensure:

The following reports were presented for members' review; copies of which are on file at the Commission office:

- **FY07-FY08 Analysis of Active & Inactive License Base**
- **On-Line Renewal Reports**

Information and Technology Reports:

Members reviewed the Information and Technology reports; copies of which are on file at the Commission Office.

Online Lottery Drawing: Jay Arnold Green, (SP33506), from Century 21, 1st Place Realty of Eagle Idaho, won the lottery drawing for October 18, 2007.

Education:

- **Curriculum Realignment Workgroup Update:** Sue McClintock gave an update on the August 25, 2007 meeting that was held here at the Commission. Sue reported that the group worked on revision of both modules of the sales association pre-license curriculum, including integration of the interactive modules that BSU created. Sue will be organizing another meeting with the Realignment Workgroup in the next couple of weeks.
 - **BCOO Update:** This course is in the process of being revised; Sue McClintock will present an updated progress report at the next Commission meeting.
 - **Promissor Item Writing Workshop Update:** A group comprised of IREC staff, Education Council, and course providers met with the representatives who design the test at Promissor. The group reviewed every question for the sales and broker state tests. Sue stated that she has invited members from Promissor to attend the next IDW workshop to present a segment on the testing process
 - **CE Credit Clarification:** Work is being done on revising the CE Credit policy, in an effort to clamp down on providers that are offering classes that are not approved by the Commission. Sue McClintock will provide an update on this at the next Commission meeting.
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Commission's Counsel Report:

- **Attorney Conflicts and Waivers:** Kim Coster discussed the potential conflict of interest when a law firm is representing one agency of the state, and at the same time represents a client against another agency of the state. Ms. Coster explained State Bar's requirement that the firm obtain the "client's" written consent to concurrent representation ("a waiver"), and the fact that a decision outside of the regularly scheduled meeting time is typically required. She asked for guidance on how to address this in the future. Discussion followed. Members answered Ms. Coster that the conflicts waiver requests should be decided on a case-by-case basis, and be determined by the Commission Chair, and if unavailable, then the Vice Chair, etc. Members then directed Ms. Coster to draft a written policy on the subject and present it at the next meeting.

Idaho Association of REALTORS® Report: Kevin Price, Idaho Association of REALTOR®, gave an update on the upcoming Legislative session, one anticipated issue is the taxing of services, IAR is currently looking at its statement of policy for necessary revisions prior to the legislative session. IAR is submitting draft legislation to increase the number of acres from forty to eighty for which deeds of trust can be used. Kevin also reported that the discussions with EPA regarding handling of audits for lead paint disclosures in North Idaho have stalled since Senator Craig relinquished his leadership positions in the Senate.

Case of Staff vs. Jeffrey B. Simmons – (Mitigation Hearing). Chair, Steve Kohntopp presided over the hearing. Kirtlan G. Naylor, of Naylor & Hales, appeared on behalf of the Staff. The Respondent, Jeffrey B. Simmons, was personally present and represented by Steven W. Boyce, of Just Law Offices. The entire hearing, until its adjournment, was recorded on audio tape.

Executive Director's Report:

- **Access Idaho:** Jeanne Jackson-Heim stated that IREC is currently in the process of reorganizing its website and staff is currently working on revising the licensee search so users can download information which will circumvent the need for Public Records requests of this nature. The next step the staff will be working on will be the interface with online renewals. Staff is also working on a form for licensees to fill out that will enable them to submit their CE information to the Commission.
 - **Update on E&O Renewals:** Jeanne Jackson-Heim stated that the E&O noncompliance letters were sent out. This year the process was streamlined, and staff did a great job with help from temps who came in to process the certified letters. This year IREC was proactive in disseminating E&O renewal information to the licensees, through the Real Estate, on the webpage and through local Associations and MLS's to remind licensees and brokers to renew their E&O insurance by October 1. Overall the percentage of licensees not in compliance was down, although the number of late renewing licensees was larger than previous years due to an increase in the overall number of licensees.
 - **Draft of Broker Gram:** Jeanne Jackson-Heim presented two drafts of approved Broker letter. The Broker letter was renamed the Broker Bulletin. Jeanne asked Commissioners to consider the drafts and to choose which one they would like to send out to the brokers. Commissioners directed Jeanne to use both versions one to send out now and one for the Real Estate.
 - **Building:** Update, as of now it is on hold with the Governors office.
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- **Mortgage Fraud DVD:** Jeanne has obtained permission from the Georgia Real Estate Commission to use their Mortgage Fraud DVD. Jeanne has been in touch with our Department of Finance who is interested in partnering with IREC on an Idaho Mortgage Fraud presentation. Pam Trees is in favor in pursuing this project for public outreach.

Enforcement Stipulations.

Case of Staff vs. Theodore L. Schaller (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Pam Trees to accept without exception the Stipulation which had been agreed to by Theodore L. Schaller and that the "Final Order" for disciplinary actions against Mr. Schaller be as follows:

- 1) That Theodore L. Schaller shall be issued a formal reprimand.
- 2) That Theodore L. Schaller pay a civil fine in the amount of One Thousand Five Hundred Dollars (\$1500.00) by November 26, 2007.
- 3) That Theodore L. Schaller's salesperson's license shall be revoked, but that revocation is withheld until Theodore L. Schaller's probationary period pursuant to the Order Withholding Judgment and Order of Probation and Commitment ends on July 20, 2011, or unless otherwise ordered by the Court.
- 4) Should Theodore L. Schaller violate his probation, or fail to comply with the terms of the Commission's Final Order, or violate any other license law, Mr. Schaller's salesperson's license shall be revoked, without further notice or process.
- 5) Upon successful completion of Theodore L. Schaller's criminal probation, his license shall only be fully reinstated upon his written request and provided that: (1) he has fully complied with the Court's Order and Commission's Final Order; and (2) he has paid in full all fees and/or fines assessed.
- 6) That Theodore L. Schaller pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of Three Hundred Dollars (\$300.00) by November 26, 2007.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Gary W. Woody (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Kelly Fisher to accept without exception the Stipulation which had been agreed to by Gary W. Woody and that the "Final Order" for disciplinary actions against Mr. Woody be as follows:

- 1) That Gary W. Woody shall be issued a formal reprimand.
 - 2) That Gary W. Woody pay a civil fine in the amount of Two Thousand Dollars (\$2000.00) by November 26, 2007.
 - 3) That Gary W. Woody successfully complete a live Business Conduct and Office Operations course and a live Agency class by April 26, 2008.
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4) That Gary W. Woody pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of Three Hundred Dollars (\$300.00) by November 26, 2007.

5) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Gail M. Haynes (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to accept without exception the Stipulation which had been agreed to by Gail M. Haynes and that the "Final Order" for disciplinary actions against Ms. Haynes be as follows:

1) That Gail M. Haynes shall be issued a formal reprimand.

2) That Gail M. Haynes pay a civil fine in the amount of Two Thousand Dollars (\$2000.00) by November 26, 2007.

That Gail M. Haynes successfully complete a live Broker Management course by April 26, 2008.

3.) That Gail M. Haynes pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of Three Hundred Dollars (\$300.00) by November 26, 2007.

4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried.

Executive Session: In accordance with section 67-2345 (1)(d) & (f), Idaho Code, a motion was made by Andy Enrico to adjourn to executive session to review probable cause memoranda submitted pursuant to Section 54-2058(1), Idaho Code, and to review the Request for Felony Exemption. Motion carried. Members reviewed probable cause memoranda and Request for Exemption Review with their legal counsel.

Regular Session: There being no further purpose for an executive session, a motion was made by Andy Enrico to adjourn the executive session. Motion carried.

Probable Cause Memo # 07-32300, 07-32301: A motion was made by Pam Trees finding that the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are insufficient to proceed with formal action against either the sales associate or the broker; however, in regard to the sales associate only, staff is authorized to issue a staff letter of reprimand; no letter is to be sent to the broker. Motion carried.

Probable Cause Memo # 07-34400, 07-34401: A motion was made by Kelly Fisher finding that the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are insufficient to proceed with formal action; however, staff is authorized to issue a staff letter of reprimand. Motion carried.

Probable Cause Memo # 07-31000, 07-31001: A motion was made by Andy Enrico finding that the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are insufficient to proceed with formal action, and that no further action be taken. Motion failed. Pam Trees and Kelly Fisher opposed motion. Pam Trees moved that the facts are insufficient to proceed with formal action but that the staff is authorized to issue a staff letter of reprimand. Motion carried.

Probable Cause Memo # 07-24000, 07-24001: A motion was made by Andy Enrico finding that the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Motion carried.

Special Considerations & Felony Exemptions:

Special Consideration #07-044 - Exemption for Review 54-2012(2)(a). Following discussion and review of the documents submitted, motion was made by Andy Enrico to approve the request for felony exemption. Motion carried.

Licensing Supervisor Report:

Neal Bernklau, Licensing Supervisor was introduced to the meeting at 2:56 p.m.

- **Reduction in Fingerprint Fees:** On Oct 1, 2007, fingerprint fees were lowered from Thirty-Four Dollars (\$34.00) to Twenty-Nine Dollars and Twenty-Five Cents (\$29.25).
 - **Update on E&O Renewals:** Neal Bernklau stated that 2 Managing Associates, 26 Designated Brokers, 16 Companies and 151 individual licensees were still noncompliant with their E&O insurance as of today. Staff mailed out 1113 certified letters on October 5, 2007 to non-compliant licensees who had not purchased or renewed their E&O insurance by the October 1, 2007 due date. As of today only 195 licensees have not renewed their insurance. The Licensing department will be validating paperwork to ensure licensees have received their certified mail and once that is done noncompliant licensees will be made inactive.
 - **Reciprocal Licensing Agreements:** There was a discussion on licensing agreements. Jeanne Jackson-Heim stated that the different arrangements can be and are confusing to the licensees and staff. Kim Coster gave historical background on agreements and discussion followed. Andy Enrico directed staff and Kim to investigate these agreements and to bring findings back to Commissioners.
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Executive Session: In accordance with section 67-2345 (1)(d) & (f), Idaho Code, a motion was made by Andy Enrico to adjourn to executive session to review special request licensure submitted pursuant to Section 54-2022(2) & (6), Idaho Code, Motion carried. General public was excused from meeting, allowing the petitioner to personally address members regarding his request. Staff and Ms. Coster remained present.

Regular Session: There being no further purpose for an executive session, a motion was made by Andy Enrico to adjourn the executive session. Motion carried.

Petition for Review #08-006 – Request to Waive certain Broker Prelicense Education Requirements 54-2022(1)(b) and 54-2022(2)(6). Following discussion and review of the documents submitted a motion was made by Pam Trees to grant in full petitioner's request to waive the broker prelicense education requirements. Motion carried.

Commission members directed Ms. Jackson-Heim and the Education Council to revisit the Certification Policy regarding the grant of waivers of specific educational requirements for attorneys, and to revise course waivers to better align with the education and experience of the various licensed profession(s).

Executive Session: In accordance with section 67-2345 (1)(f), Idaho Code, a motion was made by Pam Trees to adjourn to executive session to consider and consult with its attorney, Ms. Coster, in the matter of Staff vs. Simmons. Motion carried. Members adjourned with Ms. Coster to discuss the pending case.

Regular Session: There being no further purpose for an executive session, a motion was made by Pam Trees to adjourn the executive session. Motion carried.

Case of Staff vs. Jeffrey B. Simmons - (Mitigation Hearing). In consideration of the facts and evidence presented, motion was made by Pam Trees to accept the recommendation of Staff to revoke Jeffery B. Simmons real estate license, and that Mr. Simmons be ordered to pay all of the Commission's cost and attorneys fees. Kelly Fisher and Andy Enrico opposed. Motion failed. Kelly Fisher moved as follows:

1. The Commission hereby approves and incorporates by this reference the Stipulation filed by the parties and the facts and violations admitted therein as the Commission's own Findings of Fact and Conclusions of Law.
 2. Based upon the parties' Stipulation and the evidence and argument presented, and pursuant to its authority under Sections 54-2059 and 54-2061, Idaho Code, the Commission imposes the following discipline:
 - A. The Respondent's real estate license is REVOKED; however, the revocation shall be WITHHELD upon the terms and conditions set forth in paragraph D below;
 - B. The Respondent shall pay a civil fine in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), due on or before November 17th 2008;
 - C. The Respondent shall pay costs and attorney fees incurred in this matter, in the amount determined by the Commission after review of the Staff's Memorandum of Costs and Fees and any written Objections thereto filed by the Respondent, on or before November 17th, 2008.
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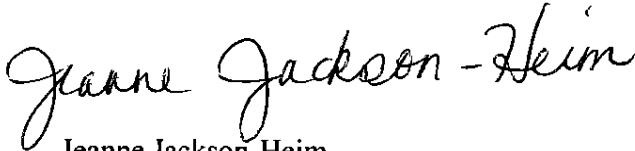
- D. The license revocation ordered herein shall be withheld, and the Respondent's license instead shall be suspended from November 19th, 2007 until November 17th, 2008, followed by a probationary period extending through November 17, 2012, in accordance with the following terms and conditions:
1. On or before November 17th, 2008, and prior to applying for reinstatement of his license, the Respondent shall have paid in full the civil fine and all costs and attorney fees ordered in these proceedings;
 2. On or before November 17th, 2008, and prior to applying for reinstatement of his license, the Respondent shall successfully complete (1) an Anger Management class, which must be different from the class he completed at Bingham Memorial Hospital and be comprised of at least twenty (20) hours of live instruction; and (2) a live real estate Ethics or live Professionalism class;
 3. For the five (5) year period following the issuance of this Final Order through November 17, 2012, the Respondent shall comply with all provisions of the Real Estate License Law, Chapter 20, Title 54, Idaho Code;
 4. Except as provided in the following paragraph 5, if the Staff of the Commission has reason to believe the Respondent has violated the License Law or any term or condition of the Commission's Orders in these proceedings, the Staff shall file and serve upon the Respondent a motion alleging the violations, and shall have the matter set for hearing before the Commission for determination as follows: (i) if the Respondent's license has not yet been reinstated at the time the motion is filed, the hearing shall be to determine whether the license should be revoked or remain suspended and under what terms; or (ii) if the Respondent's license has been reinstated at the time the motion is filed and the Respondent alleged violation occurred during the probationary period, to determine whether the withheld revocation should continue to be withheld, or whether the license should be revoked;
 5. If the Respondent fails to timely pay the full amount of the civil fine ordered herein, fails to timely pay the costs and attorney fees ordered herein, or fails to timely complete the classes ordered herein, and
 6. unless an extension of time has been granted by the Commission, the Executive Director shall cause the Respondent's license to be revoked, automatically and without further process before the Commission.

IT IS FURTHER ORDERED that Staff of the Commission shall immediately serve upon the Respondent its Memorandum of Costs and Attorney's Fees, itemizing its expenses. Respondent shall have TEN (10) days after service of Staff's Memorandum, or after the service of this Order, which-ever is later, to submit to the Commission and serve upon the Staff any objections to the costs and fees claimed to have been incurred by the Staff.

Kelly Fisher, Andy Enrico and Steve Kohntopp in favor, Pam Trees opposed. Motion carried.

There being no further business, motion was made by Steve Kohntopp to adjourn the meeting at 4:51 p.m. Motion carried.

Respectfully Submitted,



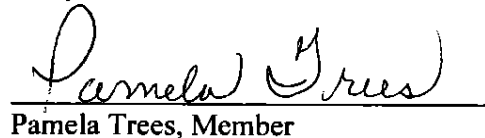
Jeanne Jackson-Heim
Executive Director

JJH: tla

Attachments: Licenses Issued September 2007
FY07-FY08 Analysis of Active & Inactive License Base
Online License Reports
Complaint Summary Report
September 2007, Financial Reports
Information and Technology Reports

"Final Order" – Jeffrey B. Simmons
"Final Order" – Theodore L. Schaller
"Final Order" – Gary W. Woody
"Final Order" – Gail M. Haynes

Minutes of the Idaho Real Estate Commission meeting in Boise, Idaho on October 18, 2007, are hereby approved.


Steve Kohntopp, Chair
Andy Enrico, Vice Chair
Kelly Fisher, Member
Pamela Trees, Member